

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Robert Martin,

:

Plaintiff : Civil Action 2:14-cv-0046

v. : Judge Smith

HCA-Rouse, *et al.*, : Magistrate Judge Abel

Defendants

:

REPORT AND RECOMMENDATION

Plaintiff Robert Martin, a prisoner at the Pickaway Correctional Institution, has filed a complaint alleging that he has been denied medical care. This matter is before the Magistrate Judge on Martin's January 18, 2014 motion to proceed *in forma pauperis*. (Doc. 2.)

Three Strikes. Under the provisions of 28 U.S.C. § 1915(g) a prisoner who "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," cannot proceed *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." The prisoner must be "under imminent danger of serious physical harm" at the time the complaint is filed, not at the time of the actionable events. *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 314 (3d Cir. 2001); *Medberry v. Butler*, 185 F.3d 1189, 1192-93 (11th Cir. 1999); *Ashley v. Dilworth*, 116 F.3d 715, 717 (8th Cir. 1998); *Banos v. O'Guin*, 144 F.3d 883, 884-85 (5th Cir. 1998).

Martin has had more than three previous suits dismissed and or appeals denied

because his complaint was frivolous or failed to state a claim. See, e.g., *Robert Martin v. Mrs. Lowery*, 2:04-cv-641 (doc. 17); *Robert Martin v. Mrs. Lowery*, No. 05-3258 (6th Cir. Decision September 30, 2005); *Robert Martin v. Ohio Supreme Court*, 2:04-cv-613 (doc. 10); and *Robert Martin v. Ohio Supreme Court*, No. 05-3388 (6th Cir. Decision September 28, 2005). He does not allege that he is in imminent danger of serious physical harm. Consequently, the Magistrate Judge RECOMMENDS that plaintiff Robert Martin's January 18, 2014 motion to proceed *in forma pauperis* (doc. 2) be DENIED.

Dispositive notice right appeal

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

s/Mark R. Abel

United States Magistrate Judge